

REMARKS

Status of Claims

The Office Action mailed November 9, 2007 has been reviewed and the comments of the Patent and Trademark Office have been considered. Claims 1-17 were pending in the application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier. Therefore, claims 1-17 are pending in the application.

Prior Art Rejections

In the Office Action, claim 1 stands rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication 2002/0143646 to Boyden (hereinafter “Boyden”). Claims 2-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boyden in view of by U.S. Patent Application Publication 2002/0116305 to Abhyanker (hereinafter “Abhyanker”). Applicants respectfully traverse these rejections for at least the following reasons.

Claim 1 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Boyden. Claim 1 recites an auction system “wherein the amount of the delivery charge borne by the dealer is dependent upon the auction commodity which is to be sold.” Boyden is directed towards an auction system for used cars. Boyden generally teaches determining delivery costs for an auction commodity (a used car) that is sold. However, there is no teaching in Boyden of a determination of how much of the delivery charge is to be borne by the dealer, let alone any teaching of such a determination depending upon the auction commodity that is sold. Rather, Boyden explicitly teaches that:

“The transportation section 370 also includes an estimated delivery period 372 and a transportation fee 373 based on the buyer destination 371 . The transportation fee 373 can be retrieved from a database that includes estimated costs for transporting vehicles between various locations or generated by the auction server system. As explained in more detail below, **the transportation fee can be determined by estimating the cost to transport a vehicle from one location to another and adding a service charge for arranging the transportation of the vehicles. The**

transportation fee 373 can be a guaranteed, fixed price such that the electronic auctioneer assumes the risk for finding a carrier that will deliver the vehicle from a seller location to the buyer destination.” (paragraph 50, emphasis added)

There is no teaching or suggestion here that the transportation fee is determined based upon the auction commodity that is sold. Boyden further teaches how the transportation fee is calculated:

“In one embodiment, the algorithm is based upon **the mileage between the current location of a vehicle (provided by a seller) and the buyer destination (provided by the buyer)**. For example, the transportation fee can be a straight line function, a step function or a non-linear function based on mileage. In another embodiment, the algorithm can be based upon the **distance and cost to transport several vehicles between major metropolitan areas**, and any additional costs to transport the individual vehicles from the metropolitan areas to the buyer destinations. The electronic auctioneer can also establish agreements with carriers, such as railroad and truck carriers, for transportation based upon the **mileage and the number of vehicles**. The transportation fee displayed by the electronic auctioneer can be an amount for hauling a single vehicle so that the electronic auctioneer can keep any volume discounts that it receives as profit. The transportation module 480 can accordingly provide a transportation fee for a vehicle detail page (among others) and arrange for the transportation of the vehicle from the seller location to the buyer destination.” (paragraph 0070)

Thus, Boyden calculates transportation fees based upon the mileage between locations of the vehicle currently and the buyer destination, or determines a rate based upon the distance and cost to transport more than one vehicle, potentially through established agreements with carriers. There is no teaching or indication that “the amount of the delivery charge borne by the dealer is dependent upon the auction commodity which is to be sold,” as required by the

invention as claimed. If this rejection is maintained, the examiner is respectfully requested to point out where these features are disclosed in Boyden.

Claims 2-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boyden in view of Abhyanker. Independent claims 2, 7, 10, 13 and 16 recite a similar limitation as that of claim 1, generally citing an auction system “wherein the amount of the delivery charge borne by the dealer is dependent upon the auction commodity which is to be sold.” The comments pertaining to Boyden above are equally applicable here. Boyden fails to teach or suggest the a relationship between the auction commodity and the amount of delivery charge that is borne by the dealer. As shown above, there is no teaching or suggestion in Boyden of an auction system “wherein the amount of the delivery charge borne by the dealer is dependent upon the auction commodity which is to be sold”.

Abhyanker fails to make up for the deficiencies of Boyden as shown above. Abhyanker is directed towards facilitating an auction and selecting shipping services through a bidding method. The portal of Abhyanker either selects a bid, or allows the buyer or seller to select a bid. There is no teaching or suggestion in Abhyanker of a determination of how much of the bid (delivery charge) is to be borne by the dealer, let alone any teaching of such a determination depending upon the auction commodity that is sold. Thus, Abhyanker, either alone or in combination with Boyden, would also fail to teach all of the limitations of the independent claims 2, 7, 10, 13 and 16. If this rejection is maintained, the examiner is respectfully requested to point out where these features are disclosed in either Boyden or Abhyanker.

The dependent claims are also patentable for at least the same reasons as the independent claims on which they ultimately depend. In addition, they recite additional patentable features when considered as a whole. As mentioned above, Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

Conclusion

In view of the foregoing amendments and remarks, Applicant believes that the application is now in condition for allowance. An indication of the same is respectfully

requested. If there are any questions regarding the application, the examiner is invited to contact the undersigned attorney at the local telephone number below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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